HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether he case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 789 of 2006 (M/S)
Mohammad Shakir
Vs
Civil Judge (J.D.) Ranikhet
Distt. Almora and another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 31.07.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 789 (MS) of 2006

Mohammad Shakir,
s/o Abdul Kareem,
Shop Keeper of Readymade Garments,
Gandhi Chowk, Ranikhet,
District-Almora. .....Petitioner.

Versus

1. Civil Judge (junior Division), Ranikhet, District – Almora.
2. Mohammad Hanif, S/o Sri Mohammad Aziz, R/o Sudamapuri Ranikhet, District-Almora.

.....Respondents.

Dated: 31.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri T.A. Khan & Smt. Farida Siddiqui, Advocate for the petitioner, Standing Counsel for the respondent no. 1 and Sri Siddartha Bisht, Advocate for the respondent no.2.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 31.05.2006 passed by respondent no. 1 in Civil Suit No. 14/2004.

3. Briefly stated, according to the case of the petitioner, a Civil Suit was field by the respondent no. 2 against him being Civil Suit No. 14 of 2004 before the

respondent no. 1 alleging that the respondent no. 2 was the owner and lease-holder of House No. 2 to 9 and October, 2004, respondent no. 2 had put his roof after demolishing some portion of the wall without taking consent of the petitioner and petitioner claimed Rs. 20,000/- as compensation of demolition of the linter.

4. During the pendency of the case, an amendment application has been filed by the plaintiff/respondent no.2 by praying for the following amendment:-

''अ. अतः प्रर्थना है कि दावे के पैरा संख्या 2 के अन्त में यह इबारत जोड दी जाये ''दिनांक 03.05.05 को प्रतिवादी ने वादी की उक्त दीवाल के उपर मय बनायी गयी पहली मंजिल की छत का लिन्टर डाल दिया है तथा जमीन की मंजिल की छत के लिन्टर पर पहले लकडी का जो पाटेशन वादी की दीवाल पर लगाया था उसको दिनांक 21.04.06 को हटाकर वादी की इस दीवाल पर पूरी 18 फीट की लम्बाई में ईट की पक्की दीवाल दे दी है। इस प्रकार वादी की दीवाल की पूरी चौडाई को बन्द कर दिया है तथा इस नयी दीवाल के दक्षिण–पूर्वी हिस्से में एक नया दरवाजा बना दिया है। इस प्रकार अब प्रतिवादी द्वारा वादी की दीवाल के उपर दो लिन्टर, तीन कॉलम तथा एक दीवाल 18 फिट लम्बी व एक दरवाजे को तुडवाया जाना आवश्यक है।

ब– कि दावा पैरा संख्या 7 में शब्द ''लिन्टर '' से पहले अंक ''2'' तथा शब्द लिन्टर के पश्चात इबारत 2 लिन्टर, 3 कौलम, दीवार 18 फीट लम्बी तथा दरवाजा ''जोड दिया जाय तथा शब्द मूल्य के बाद अंक 1000=00 को काटकर इस स्थान पर अंक ''2000'' जोड दिया जाय शब्द कुल मूल्यांकन के पश्चात अंक ''22000'' को काटकर इस स्थान पर अंक ''23000'' जोड दिया जाय। इसी पैरा में अंक ''1907'' एंव 22.50 के बीच में अंक ''22.50'' जोड दिया जाय तथा अंक ''1952=00'' को काटकर इस स्थान पर अंक ''1974=50'' लिख दिया जाय।

स– कि अनुतोष (ब) में शब्द लिन्टर के पहले अंक ''2'' लिखा दिया जाय तथा शब्द ''लिन्टर'' एंव अक्षर ''को'' के बीच इबारत 3 कालम, 1 दीवाल 18 फिट लम्बी व एक दरवाजा जोड दिया जाय।''

5. The objections have been filed by the tenant on the ground that the same shall in the knowledge of the plaintiff. The suit was filed with a prayer to the following effect"-

''(अ) प्रतिवादी दीवार के नुकसान का मुआवाजा 20,000/– (बीस हजार) रूपया वादी को अदा करे।

(ब) प्रतिवादी, वादी की दीवार पर रखे 2 लिन्टल 3 कालम एक दीवाल 18 फीट लम्बी व एक दरवाजा को नियत तिथि अन्दर तुड़वाये, अन्यथा माननीय न्यायालय के माध्यम से प्रतिवादी के खर्च पर तुड़वाया जाय।

(स) प्रतिवादी को वादी की दीवार पर भविष्य में निर्माण करने से हमेशा के लिए निषिद्ध कर दिया जाये।

(द) अन्य अनुतोष उपरोक्त प्रसंग में यदि आवश्यक हो, वह भी प्रदान किया जाय।

6. The trial Court has allowed the amendment.

7. The grievance of the petitioner is that trail court has not considered the fact at the time of allowing the amendment and in the commission report, it was specifically mentioned that on the date of commission i.e. on 27.10.2004, the roof of ground and the pillar of first floor was existing and by way of application for amendment, the respondent no.2 has sought amendment in the plaint for getting a relief for the demolition of the roof of the ground floor and the pillars of the first floor.

8. In ***Keshwa Nand Puri Vs. State of Uttaranchal 2003 (53) ALR 278,*** it has been observed as under:-

> "it is a settled law that at the time of allowing of amendment, the court has only top look as to whether the ingredients of Order VI, Rule 17 CPC are satisfied or not. Rule 17 is very much clear. It provides that amendment can be allowed at any stage of proceedings on such terms as may be just, there is no quarrel with the proposition that the management was sought at the trial stage and that too without changing the nature of the suit.

9. In ***Sampath Kumar Vs. Ayyakannu and another (2002) 7 SCC 559,*** it has been observed as under:-

> "In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also ion dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings."

10. In view of the above, the respondent no.1 is directed to decide the amendment pleadings within a period of six weeks from the date of production of certified copy of this order in accordance with law and it will be open for the parties to file the amendments.

11. Consequently, writ petition is dismissed along with all the pending applications. No order as to costs.

(Rajesh Tandon, J.)

31.07.2006
Rathour